

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.458 OF 1988

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

RUKSHMANIBEN VIKRAMCHAND SHETH & ANR.

VERSUS

THE COMPETENT AUTHORITY & DY. COLLECTOR & ORS.

Appearance:

MR JR NANAVATI for the Petitioners
MR HL JANI for Respondents No.1 & 2
None Present for Respondent No.3
MR AR THAKKAR for Respondent No.4/1 to 4/5

Coram: S.K. Keshote, J
Date of decision: 5.5.97

C.A.V. JUDGMENT

The petitioners, by this Special Civil Application, are challenging the orders annexure 'A' and 'B', passed in the matter of determination of ceiling limit of land in dispute under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the 'Act 1976').

2. Under the impugned order, the respondent, the Competent Authority, held that the land belongs to Smt.Manjulaben Gokaldas and the land admeasuring 9088 sq.mts. is excess land. The petitioners have come up with the case that they, alongwith other seven persons, have formed a partnership firm, in the name and style of "Mehta Nagar Plots & Mavdi S.No. 103", with effect from 20th April 1965. The land in dispute of Survey No.103 of village Mavdi of Rajkot Taluka was purchased in the name of one of the partners, Smt.Manjulaben Gokaldas, she being an agriculturist, got N.A. permission and made plots as per the duly sanctioned layout plan and each one of the nine partners had well defined share therein as agreed by them and recorded in the partnership deed. On application of the Act 1976, the petitioner No.2, Smt.Indiraben Vasantlal Jasani, one of the partners of the firm, and claiming in the Special Civil Application to be one of the co-owners partners, submitted a statement under Section 6 of the Act before respondent No.1 in the prescribed form showing names of all these partners co-owners and this land of Survey No.103 held by this persons who are as alleged, co-owners, though it is purchased in the name of the agriculturist partner. A draft statement has been prepared under Section 8(3) of the Act 1976 and notice under Section 8(1) of the Act 1976 has been duly prepared. The notice and draft statement have been forwarded to the land holder by registered post. Smt.Manjulaben was the person who submitted written objections in regard to the draft statement, and the same were considered though she did not remain present despite of giving an opportunity for hearing. Under the order dated 30th April 1984, taking into consideration the objections filed by Smt.Manjulaben, it has been held that the land admeasuring 9088 sq.mts. of non agricultural plot of Survey No.103 of Mavdi village, is surplus land. The order for issue of final statement has been made and thereafter a final statement has been issued. Thereafter, Smt.Manjulaben Gokaldas and Smt.Indiraben Jasani, petitioner No.2 herein, filed an appeal against the said order which came to be dismissed by respondent No.1 under its order dated 28th November 1986. Hence

this Special Civil Application.

3. The learned counsel for the petitioners contended that the notice to all the partners was not given by the Competent Authority in the present case. Carrying further this contention, the learned counsel for the petitioners contended that Rule 5 of the Urban Land (Ceiling & Regulation) Rules, 1976, is a mandatory provision and casts obligation on the Competent Authority to give notices to all the partners. It has next been contended that one of the partners of the firm dies in the year 1970 and as such, the partnership firm stood dissolved. Every partner becomes tenant-in-common of the land and hence entitled to one Unit. On the other hand, the learned counsel for the respondents No.1 and 2, supported both the orders passed by the authorities in this case.

4. The partnership deed has been produced on record of the Special Civil Application. The petitioners have also produced on record, the death certificate of one Smt.Devkunvarben and the date of death is 23rd June 1970. In support of the second contention, the learned counsel for the petitioners placed reliance on the decision of this Court rendered in Special Civil Application No.4468 of 1987, decided on 25th January 1994, Coram: A.N. Divecha, J.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties. In the case aforesaid, the deceased father of the petitioners therein alongwith one Nandlal Prabhudas, had taken the lands in dispute therein on lease for 99 years sometime in the year 1954. The terms of the partnership between the father of the petitioners and the said Nandlal were not reduced in writing. The father of the petitioners therein breathed his last sometime on 23rd August 1973. Since there were only two partners in the partnership firm and since one partner died leaving behind only one partner in the partnership firm and since there cannot be a partnership firm of only one partner according to law, the partnership in question automatically stood dissolved on the death of the father of the petitioners therein. It was the case of petitioners therein that both the partners in the said firm had equal shares and the lease hold rights in the disputed lands were inherited by the branch of the deceased partner and the other partner in equal share. On coming into force of the Act 1976, the petitioners therein filed their separate forms for the purposes of the Act. Each petitioner showed his 1/3rd share in 50%

of the land thereof, meaning thereby, 1/6th share in the disputed land has been showed alongwith other properties. Draft statement was prepared on the basis of aforesaid statement by the Competent Authority and served to the petitioners and their mother as the heirs and legal representative of deceased predecessor-in-title. In the meantime the other partner of the deceased father of the petitioners also breathed his last and he was survived by his own heirs and legal representatives. They appear to have formed one partnership firm in the name and style of Gokuldas Prabhudas & Bros. Another draft statement has been prepared in that case treating the disputed lands as belonging to the heirs of both the partners of the dissolved partnership firm in their capacity as an association of persons. That draft statement was served to the petitioners as well as the partnership firm formed by the heirs and legal representatives of the other partner. The Competent Authority registered five cases and by its common order, it came to the conclusion that the disputed land belongs to the heirs and legal representatives of both the partners of the aforesaid dissolved firm in their capacity as association of persons and they would be entitled to only one single unit under the Ceiling Act for holding the vacant land. Accordingly, ceiling limit has been determined. Appeals were preferred and the same were dismissed. The petitioners therein have then come up before this Court. In this factual matrix, this Court held that when a partnership consisting of only two partners, on the death of either partner, the firm automatically stands dissolved as there could not be a partnership with only one person as a partner. It has further been held that on dissolution of the firm, the partnership assets would devolve upon its partners or the representatives of the partners as tenants-in-common. It would mean that each person getting his or her share in the partnership assets would be getting his distinct share therein even if the partnership assets remain undivided.

6. The facts of the case in hand are that the land in question was not purchased in the name of the partnership firm. The land in question was an agricultural land and as such, it could have been sold only to an agriculturist. The land stood in the name of Smt.Manjulaben in both forms, as an agricultural land as well as non agricultural land after non Agricultural permission in the revenue record. In view of this fact, both the authorities have not committed any error or illegality whatsoever in holding that the land was of the ownership of Smt.Manjulaben Gokaldas. The land was purchased by Smt.Manjulaben and non agricultural

permission has also been granted in her name. Taking into consideration the totality of the facts of this case, both the authorities have not committed any error in holding that the land has nothing to do with the partnership firm on behalf of which Smt.Indiraben has filed a declaration.

7. None of the points which have been raised by the counsel for the petitioners before this Court has been raised by the petitioners before the Appellate Authority. The petitioner No.1 was not even a party before the Appellate Authority as the appeal has been filed by Smt.Manjulaben Gokaldas and Smt.Indiraben Jasani. It is significant to note here that Smt.Manjulaben has accepted the judgment of the Appellate authority as she has not filed the Special Civil Application before this Court. Smt.Indiraben filed this Special Civil Application, but she joined one Smt.Rukshmaniben Sheth, petitioner No.1 herein, who was not a party before the Appellate Authority. None of the appellants before the Appellate Authority, despite of notice of proceedings, have chosen to remain present on the date of hearing. The date of hearing, i.e. 11.11.86 was fixed and the appellants were informed of the same but they have not remained present and as such, the Appellate Authority has proceeded to decide the matter. In view of this fact, it is not open to the petitioners to raise new points before this Court which were not raised before the Appellate Authority. The validity of the judgment of the authority has to be considered with reference to the points raised therein and not on the basis of the points which have been raised in the Special Civil Application before this Court.

8. I have gone through the memo of appeal filed by the appellants before respondent No.1 and I do not find therefrom that the petitioners have raised the point of dissolution of partnership firm on the death of one of the partners. However, the point that notice has not been given to all the partners appears to have been raised, but this point raised by the counsel for the petitioners in the present case is otherwise not sustainable on merits.

9. The petitioner No.2 herein submitted statement under Section 6 of the Act 1976 in respect of the land in dispute. A copy yof the statement submitted by petitioner No.2 is not filed on the record, but from the document annexure 'A', it is no more in dispute that the statement has been filed on behalf of the partnership firm and the petitioner No.2 filed the same in capacity of one of the partners of the firm. The notice,

admittedly has been received by the petitioner No.2 and respondent No.3 from the competent authority and objections have been submitted and the competent authority, while passing the final order has taken the note of those objections. Neither the petitioner No.2 nor the respondent No.3 has put appearance before the competent authority after receipt of the notice. The objection was taken that the partner amongst the partners, Smt.Manjulaben Gokaldas has sold this land to the society according to their information, Jay Bharat Cooperative Housing Society Ltd. Smt.Manjulaben Gokaldas has also been shown as partner of the firm and she filed the objections, but she did not put appearance. So, before the competent authority also, the petitioners or other partners or the respondent No.3 have not raised the point that the firm stood dissolved on the death of one of its partners. These are not purely questions of law but are mixed questions of law and fact and unless specific objection is taken in this respect before both the authorities, how it can be said that any error, much less any error apparent on the face of the orders of the authorities, is there. As stated earlier, this point has been raised for the first time before this Court. In the memo of appeal also, this point was not raised. So both, in the objections before competent authority and before appellate authority, this point was not raised.

10. Section 6 of the Act 1976 provides that every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him and also specifying the vacant lands within the ceiling limit which he desires to retain. So the partner of the firm filed a statement under the aforesaid provision. On the basis of the statement filed by petitioner No.2, under Section 6 of the Act 1976, the competent authority prepared a draft statement in respect to the persons who filed the statement under the aforesaid Section. That draft statement has been served upon both the petitioner No.2 and the respondent No.3 and the notice of filing of any objection to the draft statement has also been given. Rule 5 of the Rules 1976 on which much emphasis has been placed by the learned counsel for the petitioner provides for the particulars to be contained in draft statement as regards vacant lands and manner of service of the same. Sub rule 2 of Rule 5 provides that the draft statement shall be served, together with the notice referred to in

sub-section (3) of Section 8 of the Act 1976 on the holder of the vacant lands, and on all other persons, so far as may be known, who have, or are likely to have, any claim to, or interest in the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned. In the case of the holders of the vacant lands, to his address as given in the statement filed in pursuance of sub-section (1) of Section 6, and in the case of other persons at their last known addresses. The contention of the learned counsel for the petitioner is that the draft statement and the notice should have been sent to all the partners of the firm. But I do not find any substance in this contention. I have already given out the scheme of Rule 5 of the Rules, 1976. The notice is only contemplated to the holder of the vacant lands or of other persons so far as may be known who have or are likely to have any claim to or interest in the ownership, or possession or both of the vacant lands. It is not in dispute that the statement under Section 6 of the Act 1976 has been filed by none other than the partnership firm through its partner, the petitioner No.2 herein. So when the statement is submitted by the firm through its partner who is claiming to be the holder and in possession of the land, notice has to be given only to the partner who filed the statement and undisputedly the notice has been given to the petitioner No.2. From the facts of this case, it comes out that another interested person in the land would have been respondent No.3 and admittedly respondent No.3 has also been given the notice and the draft statement, by the competent authority. She was also shown as one of the partners in the statement of the firm. She filed the objections against the draft statement and the objections have been considered. In view of this fact discussed above, the notice to all the partners was not necessary and on the basis of this, no grievance could have been made by the petitioners before this Court. The land in dispute has been purchased by Smt.Manjulaben Gokaldas undisputedly on 20th April 1965. The said land stands in the name of Smt.Manjulaben in the revenue records and it continues to remain in her name for all the years to come in the revenue records. The petitioners have not produced on record any document to show and prove that at any point of time, after the constitution of the firm, the necessary correction has been made in the revenue record of rights in respect of the land in dispute. This land was never entered in the revenue record of rights in the name of the partnership firm as nothing has been produced on the record of the competent authority or the Appellate Authority or before this Court. The non agricultural permission has been

taken in the name of Smt.Manjulaben Gokaldas and thereafter this land continues in the name of said lady in the revenue record of rights. In view of these facts, no exception can be taken to the findings of both the authorities that this land is not of the partnership firm, but of Smt.Manjulaben Gokaldas and taking it to be so, the ceiling limit has rightly been determined. When the land is of Smt.Manjulaben Gokaldas and not of firm, even if one of the partners of the firm died and firm stood dissolved, otherwise also how it has any relevance to the present case.

11. Before parting with this case, I consider it to be appropriate to make reference to the Civil Applications which have been filed in this case from time to time. The first Civil Application in the chain is C.A. No.330 of 1991 filed by the applicants Shri Hargovind Kanjibhai Joshi and Vithaldas Kanjibhai Joshi. Prayer has been made by these two applicants in the C.A. to join them as party-respondents in the Special Civil Application No.458 of 1988. The applicants claimed themselves to be the partners of the firm. This C.A. came to be allowed by this Court and they have been impleaded as party. Then comes the C.A. No.590 of 1995 by these very applicants (now respondents No.4 & 5) and prayer has been made therein that they are not served with the notice in ULC No.6(1) 3462/76 filed by Smt.Indiraben Vasantlal Jasani and prayer has been made for remand of the matter. It is not the case of respondents in both the Civil Applications filed by them as well as nothing has been produced on the record to show that they have no notice or knowledge of the proceedings. Not only this, it is also not their case that the petitioner No.2 filed the statement under Section 6(1) of the Act 1976 without their consent or instructions. So these respondents had the notice and knowledge of the proceedings but still at no point of time, they have taken any steps to get themselves impleaded in the proceedings. Before this Court also, they have not taken any steps to file application till 1995. Be that as it may. In view of the finding given by me that the notice was not required to be given to every partner, the C.A. No.590 of 1995 deserves to be rejected. Order accordingly. The C.A. No.590 of 1995 is dismissed. The third C.A. No.3112 of 1995 was regarding bringing on record, the heirs of respondent No.4, which has been allowed and no further order is required.

12. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

Interim relief, granted by this Court stands vacated. No
order as to costs.

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